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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216932
Party	Defendant Rapid Capital Funding LLC
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Attachments	RCF_Answer and Affirmative Defenses_082014.pdf(255775 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86111998  
Published in the *Official Gazette* on June 10, 2014

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RAPID FUNDING, LLC,

Opposer,

Opposition No. 91216932

v.

RAPID CAPITAL FUNDING, LLC,

Applicant.

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**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION  
AND AFFIRMATIVE DEFENSES**

Applicant, Rapid Capital Funding, LLC (“Rapid Capital”), for its answer to the Notice of Opposition filed by the Rapid Funding, LLC (“Rapid Funding”) against application for registration of Rapid Capital’s trademark RAPID CAPITAL FUNDING, Serial No. 86111998, filed November 6, 2013, and published in the Official Gazette of June 10, 2014 (the “Mark”), pleads and avers as follows:

1. Applicant does not have sufficient knowledge or information to form a belief as to the allegations and accordingly denies the allegations of ¶ 1.
2. Applicant does not have sufficient knowledge or information to form a belief as to the allegations and accordingly denies the allegations of ¶ 2.
3. Applicant admits the allegations of ¶ 3.
4. Applicant admits the allegations of ¶ 4, and further states that such registration has been cancelled and the registered mark is now DEAD.
5. Applicant does not have sufficient knowledge or information to form a belief as to the allegations and accordingly denies the allegations of ¶ 5.
6. Applicant does not have sufficient knowledge or information to form a belief as to the allegations and accordingly denies the allegations of ¶ 6.

7. Applicant admits that in its trademark application it was stated that it began using the Mark on June 1, 2007, but otherwise does not have sufficient knowledge or information to form a belief as to the allegations and accordingly denies the allegations of ¶ 7.
8. Applicant denies each and every allegation contained in ¶ 8.
9. Applicant denies each and every allegation contained in ¶ 9.
10. Applicant denies each and every allegation contained in ¶ 10.
11. Applicant denies each and every allegation contained in ¶ 11.
12. Applicant denies each and every allegation contained in ¶ 12.
13. Applicant denies each and every allegation contained in ¶ 13.
14. Applicant denies each and every allegation contained in ¶ 14.
15. Applicant denies each and every allegation contained in ¶ 15.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Opposer fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

As a result of Applicant's continuous use of the Mark since the time of Applicant's adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Applicant, and caused the Mark to become a valuable asset of Applicant.

#### **Third Affirmative Defense**

There is no likelihood of confusion, mistake or deception because, inter alia, the Mark and the alleged trademark of Opposer are not confusingly similar.

#### **Fourth Affirmative Defense**

Alternatively, any similarity between the Mark and Opposer's alleged trademark is restricted to that portion of the Mark consisting of the words "Rapid" or "Funding" which are not

distinctive. As a result, under the anti-dissection rule any secondary meaning Opposer may have in its alleged RAPID FUNDING trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the words “rapid funding”.

#### **Fifth Affirmative Defense**

Upon information and belief, Opposer’s alleged trademark RAPID FUNDING, has been used by numerous third parties that have included and used the exact term “rapid funding”. As a result, any trademark or service rights that Opposer may have had, have not acquired distinctiveness and have now become generic or extremely diluted, and are therefore inherently unprotectable absent acquired distinctiveness, which the alleged RAPID FUNDING mark lacks.

#### **Sixth Affirmative Defense**

Opposer’s rights in and to the portion of its alleged RAPID FUNDING trademark are generic or, in the alternative, merely descriptive of the goods or services offered under the mark. Opposer’s alleged mark is therefore inherently unprotectable absent acquired distinctiveness, which the alleged RAPID FUNDING mark lacks.

#### **Seventh Affirmative Defense**

Applicant has been using the Mark and developing consumer recognition and goodwill therein since at least June 1, 2007, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Applicant. During this time, Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, on which inaction Applicant has relied to its detriment. Opposer’s claims are consequently barred by the doctrines of laches, acquiescence and estoppel.

#### **Eighth Affirmative Defense**

Opposer’s alleged RAPID FUNDING trademark is a generic reference to the services offered under the mark, i.e., “funding” that is “rapid”. Alternatively, Opposer’s alleged RAPID FUNDING trademark is merely descriptive of the services offered under the mark, i.e., “funding” that is “rapid”

WHEREFORE, Applicant prays as follows:

- (a) This opposition be dismissed;
- (b) A registration for the Mark RAPID CAPITAL FUNDING be issued to the Applicant.

Dated: August 20 2014

Respectfully Submitted,



By: \_\_\_\_\_

William D. Weyrowski

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 20th day of August, 2014, a true copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES was served in the following manner, per the prior written agreement of counsel:

**VIA EMAIL**


Hatch Ray Olsen Sandberg, LLC  
730 17<sup>th</sup> Street, Ste 200  
Denver, CO 80202  
Email: jjacobs@hatchlawyers.com

By: \_\_\_\_\_

William D. Weyrowski

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 20th day of August, 2014.

By: \_\_\_\_\_

William D. Weyrowski